Hovsepian v. Apple, Inc. Doc. 287

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. 05 CV 01114 JW MDL No. 1665 **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED.R.CIV.P. 56 ON ACACIA'S PATENT INFRINGEMENT CLAIMS AND ON DEFENDANTS' COUNTERCLAIMS FOR PATENT INVALIDITY** Date: July 7, 2008 Time: 9:00 a.m. Ctrm: Hon. James Ware

HENNIGAN, BENNETT & DORMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA

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TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 7, 2008 at 9:00 a.m., or as soon thereafter as the matter may be heard, Plaintiff Acacia Media Technologies Corporation ("Acacia") will move, and hereby does move, for summary judgment pursuant to Fed.R.Civ.P. 56 in favor of defendants on Acacia's patent infringement claims and on defendants' counterclaims for patent invalidity.

This motion is based on, among other things, Acacia's stipulation that all of the asserted patent claims – claims 41, 45, and 46 of the '992 patent, claims 17-19 of the '863 patent, claim 11 of the '720 patent, and claims 1-42 of the '702 patent – are indefinite and therefore invalid under the Court's Orders construing the asserted patent claims.[1] Pursuant to Fed.R.Civ.P. 56(c), the Court should render judgment in favor of defendants on Acacia's patent infringement claims and in favor of defendants on their counterclaims for patent invalidity as there is no genuine issue of material fact as to the invalidity of the asserted patent claims and Acacia, as the moving party, is entitled to judgment as a matter of law.

Acacia makes this motion for summary judgment without prejudice as to all rights of Acacia on appeal and this motion shall not serve as a waiver of any right that Acacia may have to object to or appeal from any of the above-mentioned rulings or any other finding or ruling set forth in the Court's 1st Claim Construction Order ("CCO"), 2nd CCO, 3rd CCO, 4th CCO, 5th CCO, or 6th CCO that is not the subject of this motion.

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[1] Specifically, this motion is based upon: (1) the Court's determination that the terms "identification encoder" and "sequence encoder" are indefinite; (2) the Court's construction of "transmission system," which requires an "identification encoder"; (3) the Court's construction of "central processing location," which requires a "transmission system;" and (4) the two recent orders of the Court relating to stipulated covenants not to sue.

This motion is based upon the attached Memorandum of Points and Authorities, the accompanying Declaration of Alan P. Block and proposed order, the pleadings and evidence of record, and any argument that the Court may receive at the hearing.

Dated: June 17, 2008

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Acacia seeks summary judgment pursuant to Fed.R.Civ.P. 56 in favor of defendants: (1) on Acacia's patent infringement claims, and (2) on defendants' patent invalidity counterclaims.[2]

Summary judgment is warranted in this case and should be entered forthwith.[3] The Court has completed its claim constructions and, in so doing, has determined that: (1) the terms "identification encoder" and "sequence encoder" are indefinite; (2) the term "transmission system" requires an "identification encoder"; and (3) the term "central processing location" requires a "transmission system." Based upon these determinations by the Court, all of the claims currently being asserted by Acacia against every defendant in these MDL proceedings, i.e., claims 41, 45, and 46 of the '992 patent, claims 17-19 of the '863 patent, claim 11 of the '720 patent, and claims 1-42 of the '702 patent (the "Currently-Asserted Claims"), are invalid as being indefinite. As Acacia can no longer in good faith assert any of these claims against any defendant, Acacia has stipulated to the invalidity of these claims based on the Court's constructions.

Accordingly, there being no genuine issue as to any material fact and defendants being entitled to judgment as a matter of law on the currently-asserted claims, the Court should enter summary judgment forthwith.

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[2] Although Acacia seeks summary judgment in favor of defendants on Acacia's claim for patent infringement and on defendants' counterclaims for patent invalidity, Acacia expressly reserves all rights on appeal and this motion shall not serve as a waiver of any right that Acacia may have to object to or appeal from any of the above-mentioned rulings or any other finding or ruling set forth in the Court's 1st CCO, 2nd CCO, 3rd CCO, 4th CCO, 5th CCO, or 6th CCO that is not the subject of this motion.

[3] Acacia has filed this motion for summary judgment with more than 10 days notice prior to the hearing, pursuant to Fed.R.Civ.P. 56(c) but with less than 35 days notice. Civil L.R. 56-1 provides that if the motion is filed in accordance with the time period allowed in Fed.R.Civ.P. 56(c), but less than the thirty-five days of Civil L.R. 7-2, then the Court may reschedule the hearing so as to give the opposing party the advance notice required by Civil L.R. 7-2. Acacia submits that defendants do not require additional notice, as the basis for this motion – the invalidity of the Currently-Asserted Claims, based on the Court's construction of "identification encoder," "sequence encoder," "transmission system," and "central processing location" – is not disputed.

II. THE CURRENTLY-ASSERTED PATENT CLAIMS

In these MDL proceedings, Acacia initially asserted the following claims against various of the defendants: claims 1-24, 41-49, and 51-53 of U.S. Patent No. 5,132,992 (the ‘992 patent); claims 2 and 5 of U.S. Patent No. 5,253,275 (the ‘275 patent); claims 14-19 of U.S. Patent No. 5,550,863 (the ‘863 patent); claims 4, 6-8, and 11 of United States Patent No. 6,002,720 (the ‘720 patent); and claims 1-42 of U.S. Patent No. 6,144,702 (the ‘702 patent);

Over the course of the case, and to promote manageability, Acacia has withdrawn claims 1-18, 19-22, 23, 24, 42-44, 47-49, and 51-53 of the ‘992 patent; claims 2 and 5 of the ‘275 patent, claims 14-16 of the ‘863 patent; and claims 4 and 6-8 of the ‘720 patent.[4] The parties have entered into two covenants not to sue stipulations and orders thereon, which the Court has now entered.[5] (See, Exhibits 2 and 3).

Thus, at this time, only the following Currently-Asserted Claims remain asserted by Acacia against one or more defendants in these MDL proceedings: claims 41, 45, and 46 of the ‘992 patent; claims 17-19 of the ‘863 patent; claim 11 of the ‘720 patent; and claims 1-42 of the ‘702 patent.

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[4] Following the May 9, 2008 Case Management Conference at which the Court directed Acacia to consider whether it could reduce the number of motions proposed to be brought by the defendants, Acacia withdrew claims 19-22 and 42-44 of the ‘992 patent, claims 2 and 5 of the ‘275 patent, claims 14-16 of the ‘863 patent, and claims 4 and 6-8 of the ‘720 patent. (See, May 16, 2008 Letter; Exhibit 1). All exhibits referred to in this motion are attached to the accompanying Declaration of Alan P. Block.

[5] Acacia’s covenant not to sue on claims 1-18, 19-22, 23, 24, 42-44, 47-49, and 51-53 of the ‘992 patent, claims 2 and 5 of the ‘275 patent, claims 14-16 of the ‘863 patent, and claims 4 and 6-8 of the ‘720 patent means that Acacia’s patent infringement claims and defendants’ non-infringement, invalidity, and unenforceability counterclaims with respect to these claims are mooted. *See, Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054 (Fed. Cir. 1995).

III. THERE IS NO DISPUTE THAT, BASED ON THE COURT'S CONSTRUCTIONS, ALL OF THE CURRENTLY-ASSERTED CLAIMS ARE INVALID

A. Claims 1-42 of the '702 Patent

Claims 1-42 of the '702 patent are invalid, based on the Court's determinations in its 2nd CCO that the claim terms "sequence encoder" (which appears in claims 1-26, 32, and 33 of the '702 patent) and "identification encoder" (which appears in claims 1-42 of the '702 patent) are indefinite under 35 U.S.C. § 112, ¶ 2. (2nd CCO, at 18).

Defendants agree that claims 1-42 of the '702 patent are invalid based on the Court's determinations. Following the Court's 2nd CCO, defendants (collectively) filed a motion for partial summary judgment seeking adjudication that all claims of the '702 patent (claims 1-42) are invalid. (D.I. 149; Exhibit 4). In that motion, defendants stated that: "[a]ccordingly, this Court should grant partial summary judgment of invalidity for indefiniteness as to all claims of the '702 patent." (Motion, at 6:25-7:1; Exhibit 4). In its 5th CCO, the Court denied defendants' motion without prejudice to the motion being renewed "upon completion of claim construction."[6] (5th CCO, at 18:1-18:5).[7]

[6] On March 5, 2008, defendants stated that "[o]n this record, all parties agree: that the Court's claim construction duties are complete. . ." (D.I. 269, March 5, 2008 Response to Satellite Statement in Joint Case Management Statement, at 1:14-15).

[7] Acacia also filed its own motion for partial summary judgment that all claims of the '720 patent are invalid based on the Court's determination that the terms "sequence encoder" and "identification encoder" are indefinite. Acacia's motion additionally sought certification for an immediate appeal pursuant to Fed.R.Civ.P. 54(b). (D.I. 120; Exhibit 5). In that motion, Acacia stated that: "[t]he effect of the Court's finding that the term 'sequence encoder' in claims 1, 17, 18, and 32 is indefinite and finding that the term 'identification encoder' in claims 1, 17, and 27 is indefinite, if upheld on appeal, would be to render all of the claims of the '702 patent (1-42) indefinite, and therefore invalid, under 35 U.S.C. § 112, ¶ 2." (Motion, at 2:6-10; Exhibit 5). The Court also denied Acacia's motion without prejudice to it being renewed upon the completion of claim construction. (5th CCO, at 17:19-25).

On March 28, 2008, defendants proposed filing another motion for summary judgment that claims 1-42 of the ‘702 patent are invalid based on the Court’s determinations that the terms “sequence encoder” and “identification encoder” are indefinite:

> 1) Based on the Court’s determination that “identification encoder” is indefinite (1st CCO at 18-21; 34-36; 2nd CCO at 15-18), ‘702 claims 1-42 are invalid for failure to satisfy the definiteness requirement of 35 U.S.C. § 112.
>
> 2) Based on the Court’s determination that “sequence encoder” is indefinite (1st CCO at 31-34; 2nd CCO at 6-15), ‘702 claims 1-26, 32 and 33 are invalid for failure to satisfy the definiteness requirement of 35 U.S.C. § 112.

(March 28, 2008 letter from Mr. Benyacar, at 1; Exhibit 6).

> 1. Based on the Court’s determination that claim terms are indefinite or arguably indefinite, all claims that include the indefinite terms are invalid under 35 U.S.C. § 112 – ‘702 claims 1-42 (“identification encoder”); ‘702 claims 1-26, 32, and 33 (“sequence encoder”) . . .

(March 28, 2008 letter from Mr. Kreeger, at p. 1; Exhibit 7).

On April 4, 2008, Acacia stipulated to the invalidity of claims 1-42 of the ‘702 patent, based on the Court’s determinations that “sequence encoder” and “identification encoder” are indefinite, and informed defendants that it would not oppose defendants’ proposed motion for summary judgment on this issue.[8] (Stipulation; Exhibit 8, at ¶¶ 1, 2, and 7; and April 4, 2008 letter from Mr. Block; Exhibit 9).

[8] The procedure whereby defendants identified proposed motions for summary judgment and Acacia identified the motions it would not oppose was intended to reduce the number of issues in dispute and thereby reduce the number of motions that defendants would need to bring. Because Acacia stated that it would not oppose defendants’ proposed motion that claims 1-42 of the ‘702 patent are invalid based on the Court’s determination that “identification encoder” and “sequence encoder” are indefinite, defendants will not be bringing a motion for summary judgment of their own on this issue (or any other issue which Acacia stated it would not oppose) and defendants will not renew their previously-filed motion for summary judgment that claims 1-42 of the ‘702 patent are invalid. Accordingly, to permit the Court to enter judgment that claims 1-42 of the ‘702 patent are invalid based on the Court’s determination that “identification encoder” and “sequence encoder” are indefinite, Acacia is required to bring this motion for summary judgment on this issue (and on the other issues on any currently-asserted claim for which Acacia has stated it would not oppose defendants’ proposed motion for summary judgment).

B. Claims 41, 45, and 46 of the '992 Patent and Claims 17-19 of the '863 Patent

Claims 41, 45, and 46 of the '992 patent and claims 17-19 of the '863 patent each require the use of a "transmission system." The Court construed the term "transmission system" to mean the "configurable, interconnected, assemblage of components labeled and described in the specification as 'transmission system 100,' a detailed block diagram of which is shown in Figures 2a and 2b." (6th CCO, at 11:15-18). The Court further stated that Figure 2a includes a component entitled "identification encoding process 112" and stated that the specification describes a component of the "transmission system 100" called the "identification encoder 112." (6th CCO, at 9:1-7). The Court's construction of "transmission system" therefore requires an "identification encoder" and thus the term "transmission system" is indefinite for its inclusion of an "identification encoder," a term which the Court has determined to be indefinite. Claims 41, 45, and 46 of the '992 patent and claims 17-19 of the '863 patent, which require a "transmission system," are therefore invalid as being indefinite, based on these constructions.

Defendants agree that claims 41, 45, and 46 of the '992 patent are invalid based on the Court's construction of "transmission system" and the Court's determination that "identification encoder" is indefinite. On March 28, 2008, defendants proposed filing a motion for summary judgment that claims 41, 45, and 46 of the '992 patent and claims 17-19 of the '863 patent, among other claims, are indefinite and therefore invalid based on the Court's construction of "transmission system" and "identification encoder":

> 5. Based on the Court's construction of "transmission system" and "identification encoder," '992 claims 19-22 and 41-46, '275 claims 2 and 5 and '863 claims 10-19 are invalid for failure to satisfy the definiteness requirement of 35 U.S.C. § 112.

(See, March 28, 2008 letter from Mr. Benyacar, at 2; Exhibit 6).

> 1. . . . Further, any claim that includes a "transmission system," "central processing location," or "processing station" is indefinite under 35 U.S.C. § 112 because under the Court's constructions of those terms, they must include an "identification encoder," which is indefinite.

(March 28, 2008 letter from Mr. Kreeger, at 1; Exhibit 7).

On April 4, 2008, Acacia stipulated to the invalidity of claims 41, 45, and 46 of the '992 patent and claims 17-19 of the '863 patent, based on the Court's construction of "transmission system" and its determination that "identification encoder" is indefinite. (Stipulation; Exhibit 8, at ¶¶ 3 and 7). Acacia further informed defendants that it would not oppose defendants' proposed motion for summary judgment on this issue. (April 4, 2008 letter from Mr. Block; Exhibit 9).

C. Claim 11 of the '720 Patent

Claim 11 of the '720 patent requires the use of a "central processing location." The Court construed the term "central processing location" to mean "a single transmission system, as previously defined, from which compressed, digitized data representing a complete copy of at least one item of audio/video information, is transmitted at a non-real time rate to at least one of a multiple of local distribution systems." (4th CCO, at 6:18-21). Because the "central processing location" requires a "transmission system," and because, as discussed above, the "transmission system" is indefinite for the Court's requirement that it include an "identification encoder," claim 11 of the '702 patent is invalid as being indefinite based on these constructions.

Defendants agree that claim 11 of the '702 patent is invalid based on the Court's constructions of "central processing location" and "transmission system" and the Court's determination that "identification encoder" is indefinite. On March 28, 2008, defendants proposed filing a motion for summary judgment that claim 11 of the '720 patent, among other claims, is indefinite and therefore invalid based on the Court's constructions of "central processing location," "transmission system," and "identification encoder":

> 5. . . . Further, based on the Court's constructions of "processing station" and "central processing location" (4th CCO, at 6, 20), '720 claims 6-8 and 11 are also invalid for failure to satisfy the definiteness requirement of 35 U.S.C. § 112.

(See, March 28, 2008 letter from Mr. Benyacar, at 2; Exhibit 6).

> 1. . . .Further, any claim that includes a "transmission system," "central processing location," or "processing station" is indefinite under 35 U.S.C. § 112 because under the Court's constructions of those terms, they must include an "identification encoder," which is indefinite.

(March 28, 2008 letter from Mr. Kreeger, at 1; Exhibit 7).

Acacia stipulated to the invalidity of claim 11 of the ‘720 patent, based on the Court’s constructions of “central processing location” and “transmission system” and its determination that “identification encoder” is indefinite, and informed defendants that Acacia would not oppose defendants’ proposed motion for summary judgment on this issue. (Stipulation; Exhibit 8, at ¶¶ 4 and 7; and April 4, 2008 letter from Mr. Block; Exhibit 9)

IV. THE COURT SHOULD ENTER SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS ON ACACIA’S PATENT INFRINGEMENT CLAIMS AND ON DEFENDANTS’ INVALIDITY COUNTERCLAIMS

Pursuant to Fed.R.Civ.P. 56(c), “[t]he judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.”

Here, the following pleadings and other materials, discussed above, demonstrate that there is no genuine issue as to any material fact and demonstrate that Acacia (the movant) is entitled judgment, as matter of law, in favor of defendants on Acacia’s patent infringement claims and in favor of defendants on their invalidity counterclaims for the reasons asserted in this motion:

- Acacia’s April 4, 2008 stipulation (Exhibit 8 to Block Decl.) that claims 41, 45, and 46 of the ‘992 patent, claims 17-19 of the ‘863 patent, claim 11 of the ‘720 patent, and claims 1-42 of the ‘702 patent, among other claims, are invalid based on the Court’s determination that “identification encoder” and “sequence encoder” are indefinite, based on the Court’s construction of “transmission system” as requiring an “identification encoder,” and based on the Court’s construction of “central processing location” as requiring a “transmission system”;

- Defendants’ motion for summary judgment that claims 1-42 of the ‘702 patent are invalid based on the Court’s determination that “identification encoder” and “sequence encoder” are indefinite (Exhibit 4);

- Acacia’s motion for summary judgment that claims 1-42 of the ‘702 patent are invalid based on the Court’s determination that “identification encoder” and “sequence encoder” are indefinite (Exhibit 5);

- Defendants' March 28, 2008 letters (Exhibits 6 and 7) and Acacia's April 4, 2008 letter (Exhibit 9) stating that Acacia would not oppose certain of defendants' proposed motions for summary judgment;

- The Stipulated Covenant Not to Sue; Order Thereon (Exhibit 2), wherein Acacia provided defendants with a covenant not to sue on claims 19-22, 23, 24, 42-44, 47, 48, 49, 51, 52, and 53 of the '992 patent; claims 2 and 5 of the '275 patent; claims 14-16 of the '863 patent; and claims 4 and 6-8 of the '720 patent; and

- The Stipulated Covenant Not to Sue; Order Thereon (Exhibit 3), wherein Acacia provided the Internet defendants with a covenant not to sue on claims 1-18 of the '992 patent.

As all of the claims that are currently-asserted against the defendants in these MDL proceedings, i.e., claims 41, 45, and 46 of the '992 patent, claims 17-19 of the '863 patent, claim 11 of the '720 patent, and claims 1-42 of the '702 patent, are invalid as being indefinite, based on the Court's constructions and all other asserted claims are the subject of covenants not to sue, the Court should enter summary judgment in defendants' favor on Acacia's patent infringement claims and on defendants' invalidity counterclaims, just as the court did in *Datamize, LLC v. Plumtree Software, Inc.*, 2004 U.S. Dist. LEXIS 28382, *26-27 (N.D. Cal. 2004), *affirmed*, 417 F.3d 1342 (Fed. Cir. 2005):

> For the foregoing reasons, the court GRANTS Plumtree's motion for summary judgment on the issue of indefiniteness (Doc # 51). Because the court's judgment appears to invalidate each claim of the 137 patent, plaintiff is entitled to summary judgment of invalidity of the 137 patent. Given that this both resolves Plumtree's declaratory action and undermines Datamize's claim of infringement, this order appears conclusively to dispose of this case. Accordingly, the court VACATES all currently scheduled dates in this matter and directs the clerk to close the file and terminate all pending motions.

V. ACACIA HAS EXPRESSLY PRESERVED ITS RIGHT TO APPEAL THE COURT'S CLAIM CONSTRUCTIONS

At the May 9, 2008 Case Management Conference, the Court questioned whether Acacia could bring a motion seeking summary judgment in defendants' favor without waiving its right to appeal. Acacia has expressly reserved its rights to object to and to appeal any of the Court's claim construction rulings. (See, Notice, *supra*, at 2:15-19 and n 1 at page 4).[9]

In the similar context of a patentee consenting to a judgment as a matter of law (JMOL) against itself and in favor of defendants, the Federal Circuit expressly confirmed that the plaintiff had not waived its objections or its right to appeal and, in fact, the court stated that plaintiff had acted responsibly in conserving the parties' and the court's resources:

> York explicitly objected to the trial court's claim interpretation on numerous grounds. Instead, after reserving its objections and clearly presenting the issues to the trial court, York consented to entry of JMOL to expedite its appeal and to conserve both its client's and the court's resources. Because it expressly raised and reserved objections on the claim interpretations issues on appeal, York has not waived its rights. To the contrary, York has proceeded responsibly to avoid needless expenditure of the resources of the parties and the court.

York Products, Inc. v. Central Tractor Farm & Family Center, 99 F.3d 1568, 1571 (Fed. Cir. 1996).[10]

VI. CONCLUSION

For the foregoing reasons, the Currently-Asserted Claims are invalid as being indefinite based on the Court's determination that "identification encoder" and "sequence encoder" are indefinite and based on the fact that the Court's construction of "transmission system" requires an "identification encoder" and that the Court's construction of "central processing location" requires a "transmission system." Acacia can no longer assert any of these claims in good faith against any defendant in these MDL proceedings. Additionally, the Court has entered covenants not to sue on all other asserted claims.

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[9] Similarly, Acacia's April 4, 2008 stipulation expressly stated that Acacia reserved its right to object to and appeal the Court's claim constructions. (Stipulation, Exhibit 8, at 5).

[10] *See also*, *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 296 F.3d 1106 (Fed. Cir. 2002) ("Following the court's claim construction ruling regarding the 'third monitoring means' limitation, Cardiac Pacemakers and St. Jude stipulated that under the district court's construction, the claims of the '191 patent are invalid. The parties then jointly moved for entry of a final, appealable judgment. In response, the district court granted an Order of Partial Final Judgment that claims 1-14 of the '191 patent are invalid for failure to satisfy the definiteness requirement of § 112, ¶ 2. This order expressly notes that 'the parties' stipulation is without prejudice to plaintiffs' right to appeal the court's claim construction.'")

The Court should therefore grant Acacia summary judgment in favor of all defendants in this MDL proceeding on Acacia's patent infringement claims and on all defendants' patent invalidity counterclaims.

Dated: June 17, 2008

HENNIGAN, BENNETT & DORMAN LLP

By /S/ Roderick G. Dorman
Roderick G. Dorman

Attorneys for Plaintiff
ACACIA MEDIA TECHNOLOGIES CORPORATION

PROOF OF SERVICE-UNITED STATES DISTRICT COURT

STATE OF CALIFORNIA,)
) SS.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 865 South Figueroa Street, Suite 2900, Los Angeles, California 90017.

On **June 17, 2008**, I served a copy of the within document(s) described as **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED.R.CIV.P. 56 ON ACACIA'S PATENT INFRINGEMENT CLAIMS AND ON DEFENDANTS' COUNTERCLAIMS FOR PATENT INVALIDITY** on the interested parties in this action by transmitting via United States District Court for the Northern District of California Electronic Case Filing Program the document listed above by uploading the electronic files for each of the above listed document(s) on this date, addressed as set forth on the attached Service List.

The above-described document was also transmitted to the parties indicated below, by Federal Express only.

Chambers of the Honorable James Ware Attn: Regarding Acacia Litigation 280 South First Street San Jose, CA 95113 ***3 copies***	

I am readily familiar with Hennigan, Bennett & Dorman LLP's practice in its Los Angeles office for the collection and processing of federal express with Federal Express.

Executed on **June 17, 2008**, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/S/ Carol S. Yuson
Carol S. Yuson

SERVICE LIST

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